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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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08/828,330

03/28/1997

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EXAMINER

CANFIELD, ROBERT

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

05/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 08/828,330	<b>Applicant(s)</b> MORGAN, WILLIAM D.	
	<b>Examiner</b> Robert J. Canfield	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11, 12, 14, 19-22, 28-32, 34-40, 43-45 and 50-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 is/are allowed.
- 6) ☒ Claim(s) 5-9, 11, 12, 14, 19-22, 28-32, 34-40, 43-45 and 50-70 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. This Office action is in response to the amendment filed 03/17/06. Claims 1-9, 11, 12, 14, 19-22, 28-32, 34-40, 43-45, 50-70 are pending. Claims 10, 15-18, 23-27, 33, 41 and 42 have been canceled.

2. Applicant is reminded of the continuing obligation under 37 CFR 1.178(b), to timely apprise the Office of any prior or concurrent proceeding in which Patent No. 5,400,549 is or was involved. These proceedings would include interferences, reissues, reexaminations, and litigation.

Applicant is further reminded of the continuing obligation under 37 CFR 1.56, to timely apprise the Office of any information which is material to patentability of the claims under consideration in this reissue application.

These obligations rest with each individual associated with the filing and prosecution of this application for reissue. See also MPEP §§ 1404, 1442.01 and 1442.04.

3. The Correction of Inventorship is acknowledged.

4. In the remarks section of the amendment received 05/19/00 applicant affirmatively states that there are no assignees. Patent Office records show that U.S. Patent 5,400,549 was assigned on 03/14/2006 to Industrial & Environmental Concepts, Inc.

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5. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 5-9, 11,12, 14, 19-22, 28-32, 34-40, 43-45, and 50-70 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a New Matter rejection.

There is no support as originally filed that the panels are **removably linked** together in overlapping relationship **such that gas from wastewater can flow from underneath portions of the panels through gaps between adjacent panels**. There is no mention whatsoever of gases, gaps, or the desirability to allow gases to escape/travel/migrate through gaps. There is no support for a **"non gas-tight cover system"**. There is no support that the panels are **removably linked** or of any **de-linking** and/or **re-linking** the panels. The

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original disclosure only supports a cover comprised of linked panels and that once the cover has been secured in position that it can be removed. It fails to discuss any removable linking, any de-linking, any re-linking. There is no discussion of how the cover may be removed or that the panels are removably linked to one another. There is no discussion whatsoever of unlinking or de-linking adjacent panels once they have been linked.

8. Claims 5-9, 11,12, 14, 19-22, 28-32, 34-40, 43-45, and 50-70 are rejected under 35 U.S.C. 251 as being based upon new matter added to the patent for which reissue is sought. The added material, which is not supported by the prior patent, is as follows:

See comments in above 112(1) rejection.

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,197,595 to Dearing.

Dearing provides a cover for water or other liquids comprised of a plurality of polyethylene or geomembrane panels 12 that are removably linked by a series of grommets 31 that are tied together by fasteners of any suitable cord or other device. It would appear that cover is not gas-tight; as the edges of the panels are not sealed to one another gases would be able to escape there between.

Dearing fails to specifically state that the cover is used in combination with wastewater that includes sewage and/or industrial waste.

Dearing does suggest that his cover may be used with water or other liquids and is adapted for use on ponds. These statements would have suggested to one having ordinary skill in the art at the time of the invention that the cover system of Dearing could have been used to cover wastewater in a wastewater pond or tank as it was also known to provide covers on such ponds and tanks.

11. The declaration under 37 CFR 1.132 filed 03/17/06 is insufficient to overcome the rejection of claims as obvious over U.S. Patent 4,197,595 to Dearing based upon 35 USC 103 as set forth in the last Office action because:

It refers only to the system described in the above referenced application and not to the individual claims of the application. It is opinion testimony and there is no factual support for the opinion.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

12. Applicant's arguments filed 03/17/06 have been fully considered but they are not fully persuasive.

The examiner agrees that Dearing does not disclose wastewater that includes sewage and/or industrial waste. The examiner disagrees that Dearing fails to provide motivation or suggestion that his cover may be used over a settling pond holding

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wastewater. Applicant argues that there is no support for interpreting the term "pond" as ponds that include wastewater and that Office's position is not supported by substantial evidence. The examiner maintains that the statements "this invention relates generally to buoyant flexible covers floating on water or other liquids..." and "such covers are also adapted for use on ponds..." would have suggested to one having ordinary skill in the art at the time of the invention that the cover of Dearing could have been used in any environment where it was desirable to cover a pool or pond of any liquid such as a wastewater settling pond. The terms "pool" and "ponds" are also used in the wastewater arts.

The examiner agrees that Dearing fails to disclose the panels being removably linked together in overlapping relationship with the openings of one of the panels being positioned above the openings in another panel.

As to claim 28 Dearing does not appear to adequately teach or suggest a method of linking, de-linking, and re-linking. Applicant argues that the Office has not explained where Wilson discloses de-linking and re-linking. As noted above, there is no support or disclosure in the instant application for such method steps.

The Office action has not been made final since the limitation of de-linking was presented previously and this is the first time it has been rejected as being new matter.

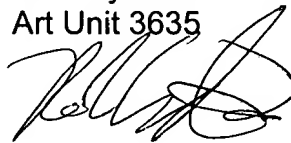
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield  
Primary Examiner  
Art Unit 3635



04/25/07